

EXECUTIVE SESSION

NOMINATION OF MICHELLE T. FRIEDLAND TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT—Resumed

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Michelle T. Friedland, of California, to be United States Circuit Judge for the Ninth Circuit.

Mr. LEAHY. Mr. President, more than 2 weeks ago, the Senate voted to end the filibuster on the nomination of Michelle Friedland of California to fill a judicial emergency vacancy on the U.S. Court of Appeals for the Ninth Circuit. That vote was the fourth time this year that the Senate had to overcome a Republican filibuster of a highly qualified circuit court nominee. In stark contrast, the Senate confirmed 18 of President Bush's circuit nominees within a week of being reported by the Judiciary Committee.

The Ninth Circuit is the busiest circuit court in the country. It has the highest number of appeals filed, the highest pending appeals per panel and the highest pending appeals per active judge. It also takes far longer than any other circuit court to resolve an appeal. The delay in resolving these appeals hurts the American people. After the confirmation last month of John Owens and what I expect will be today's confirmation of Michelle Friedland, the Ninth Circuit will be operating at full strength for the first time in more than 9 years. This is an important milestone, but we should not stop there. There are five additional circuit court nominees awaiting Senate confirmation. I hope that Senators who care about Americans having access to the courts will allow the Senate to confirm these nominees without further delay.

Michelle Friedland is an exceptionally talented attorney, who like the other 19 judicial nominees confirmed earlier this year, could and should have been confirmed last year. She was first nominated last August and after her hearing was delayed due to the Republican shutdown of our government, she finally came before the Judiciary Committee for a hearing in early November.

In January, Ms. Friedland's nomination was voted out of the Judiciary Committee with bipartisan support and she has the strong support of both of her home state Senators—Senator FEINSTEIN and Senator BOXER. Nevertheless, we were once again forced to follow the costly ritual of filing and voting on cloture and wasting valuable floor time. There is no good reason we could not have voted to confirm Ms. Friedland last year, and there is no good reason that we did not have a

vote to confirm her 2 weeks ago. Meanwhile, it is our Federal judiciary and the American people who suffer from these delays.

If confirmed, Michelle Friedland would increase the gender diversity on the Ninth Circuit Court of Appeals. She would be the seventeenth woman to ever sit on this appellate court. In comparison, 83 men have been appointed to the Ninth Circuit over the course of its history. Her confirmation will bring the percentage of active female judges sitting on the Ninth Circuit Court of Appeals to nearly 38 percent. Her confirmation will also mark the first time since the 29th judgeship was added in 2007, that it has had a full complement of active judges serving on this busy appellate court.

I hope my fellow Senators will join me today to confirm Michele Friedland to the Ninth Circuit so that she can get to work for the American people.

• Mr. INHOFE. Mr. President, I wish to express my opposition to the nomination of Michelle Friedland to the Ninth Circuit Court of Appeals.

Although Ms. Friedland has a fine resume, it is not her work experience that concerns me but, rather, her views on many issues—views that should give anyone reason to question her appointment as a U.S. Circuit Court judge. Most troubling to me is Ms. Friedland's views that the International Court of Justice preempts U.S. law, despite the Supreme Court's repeated rejection of this notion. For those who don't know, the International Court of Justice is the judicial arm of the United Nations and Ms. Friedland believes decisions from this court should be binding on state courts in the U.S. I am thankful that the Supreme Court hasn't agreed with her and I'm fearful that her appointment to the Ninth Circuit will give her the opportunity to surrender U.S. sovereignty to foreign courts and international law.

Another reason we, as legislators, should oppose Ms. Friedland is that she has expressed views that indicate judges are free to legislate from the bench. As we all learn in grade school, the legislative branch creates the laws, the executive branch enforces them, and the judicial branch interprets them. Despite this, Ms. Friedland believes laws have no force unless a judge says they do. So when legislators, elected by the people, pass a law or a constitution is amended, the new law has no power until a judge deems it enforceable and a constitution, state or U.S., does not create any rights unless the judiciary says it does. This is a dangerous notion that tells me that Ms. Friedland is likely to only enforce laws and constitutional rights with which she agrees.

It is for these reasons that I am opposed to this nomination. •

The PRESIDING OFFICER. Under the previous order, the question occurs on the nomination.

Ms. MIKULSKI. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Michelle T. Friedland, of California, to be United States Circuit Judge for the Ninth Circuit?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. COONS), the Senator from Alaska (Mr. BEGICH), the Senator from Iowa (Mr. HARKIN), the Senator from Louisiana (Ms. LANDRIEU), and the Senator from Arkansas (Mr. PRYOR) are necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Arkansas (Mr. BOOZMAN), the Senator from Kansas (Mr. MORAN), the Senator from Florida (Mr. RUBIO), and the Senator from Oklahoma (Mr. INHOFE).

Further, if present and voting, the Senator from Arkansas (Mr. BOOZMAN) would have voted "nay," and the Senator from Oklahoma (Mr. INHOFE) would have voted "nay."

The PRESIDING OFFICER (Mr. DONNELLY). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 51, nays 40, as follows:

[Rollcall Vote No. 108 Ex.]

YEAS—51

Baldwin	Heinrich	Nelson
Bennet	Heitkamp	Reed
Blumenthal	Hirono	Reid
Booker	Johnson (SD)	Rockefeller
Boxer	Kaine	Sanders
Brown	King	Schatz
Cantwell	Klobuchar	Schumer
Cardin	Leahy	Shaheen
Carper	Levin	Stabenow
Casey	Manchin	Tester
Collins	Markey	Udall (CO)
Donnelly	McCaskey	Udall (NM)
Durbin	Menendez	Walsh
Feinstein	Merkley	Warner
Franken	Mikulski	Warren
Gillibrand	Murphy	Whitehouse
Hagan	Murray	Wyden

NAYS—40

Alexander	Fischer	Murkowski
Ayotte	Flake	Paul
Barrasso	Graham	Portman
Blunt	Grassley	Risch
Burr	Hatch	Roberts
Chambliss	Heller	Scott
Coats	Hoeven	Sessions
Coburn	Isakson	Shelby
Cochran	Johanns	Thune
Corker	Johnson (WI)	Toomey
Cornyn	Kirk	Vitter
Crapo	Lee	Wicker
Cruz	McCain	
Enzi	McConnell	

NOT VOTING—9

Begich	Harkin	Moran
Boozman	Inhofe	Pryor
Coons	Landrieu	Rubio

The nomination was confirmed.

Mr. REID. Mr. President, I ask unanimous consent that the rest of the votes tonight be 10 minutes in duration.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule